IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9607 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATHOD JIVANBHAI GHELABHAI & 1 - Petitioner(s)
Versus
MUNICIPAL COMMISSIONER & 2 - Respondent(s)

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Appearance :
MR JK PARMAR for Petitioner(s) : 1 - 2.
M/S ANAND ADVOCATES for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction and/or order directing the respondent authorities to consider the post as Mukadam in

the respondent department and to consider the representation submitted by the petitioners by which the petitioners requested to appoint the petitioners on permanent regular basis and to operate the waiting list.

2. Shri JK Parmar, learned advocate appearing on behalf of the petitioners is absent. This is a matter of 1996, therefore, it is taken up for final hearing. It appears from the memo of petition that the petitioners were serving as a daily rated workmen since 1977. It is the case of the petitioners that they are not promoted to the post of Mukadam. That applications were invited and selection process was started to fill up the post of Mukadam, petitioners also applied and the petitioners were placed in the waiting list. It is submitted that waiting list of 30 members were prepared. However, 26 employees were promoted and 4 employees were not promoted inclusive of the petitioners and therefore, the petitioner submitted the representation to operate the waiting list and appoint the petitioners.

3. Shri Dipak Raval, learned advocate appears on behalf of the respondent corporation. An affidavit-in-reply is also filed. It is submitted in the reply that in the year

1988, the Corporation had prepared waiting list of 30 candidates selected for the post of daily rated Mukadam and appointments are given upto serial No.24. It is submitted that the petitioners were at serial Nos.29 and 30 respectively. It is also further submitted in the reply that persons above them in the waiting list are not appointed, so the petitioners have no cause of action and no reason for any grievance. It is also further submitted in the reply that the waiting list was prepared in the year 1988 and it has continued for more than two years. It is submitted that as per circular No.25 of the Corporation dated 29-7-1969, any waiting list should not be continued for more than two years. It is also further submitted in the reply that the Corporation had taken the the decision to scrap the list in 1994, so the petitioners cannot claim the appointment from this waiting list. Therefore, it is requested to dismiss the present Special Civil Application.

4. It is not in dispute that the petitioners' case were considered for appointment to the post of daily rated Mukadam and waiting list was prepared. It is also not in dispute that the petitioners were at serial Nos.29 and 30 respectively. From the affidavit-in-reply, it is clear

that waiting list was operated upto serial No.24 and no person above the petitioners are appointed between serial Nos.25 to 28. As submitted in the affidavit-in-reply, as per the circular No.25 of the Corporation dated 29-7-1969, waiting list should not be continued for more than two years. Corporation had taken the decision to scrap the list in 1994. No direction can be granted to the respondents to operate the waiting list and as stated above, even the persons, which were at serial Nos.25 to 28 were also not appointed. In view of scrapping of the waiting list in 1994, the waiting list is not in operation. Under the circumstances, no direction can be granted directing the respondents to operate the waiting list which is already scrapped in 1994.

5. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad interim relief if any, stands vacated forthwith. No costs.

(M.R.SHAH,J.)

shekhar/-